No. 79-1777

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

COMPLETE AUTO TRANSIT, INC., et al.,
Petitioners,

-vs-

DANNY REIS, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR PETITIONERS

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QUESTION PRESENTED

Are employees who engaged in a work stoppage in violation of the collective bargaining agreement and who acted without the authorization of their union individually liable for damages sustained by their employer arising out of their breach of the collective bargaining agreement?

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	2
STATUTE INVOLVED	2
STATEMENT OF THE CASE	3
SUMMARY OF ARGUMENT	7
ARGUMENT	
I. THE APPEALS COURT'S DECISION INCORRECTLY AND ERRONEOUSLY INTERPRETED THE LEGISLATIVE HISTORY OF SECTION 301	8
A. The Congressional Purpose Behind the Enactment of §301 Was to Make Collective Bargaining Agreements Binding and Enforceable Upon the Parties	9
B. The Appeals Court Misconstrued the Significance of the Congressional Concern Over Individual Liability	13
C. The Appeals Court's Conclusion That the Only Remedy Available to an Employer Confronted With an Unauthorized Work Stoppage in Violation of the No-Strike Clause is Discipline Has No Basis in the Legislative History of §301	14
II. THE AVAILABILITY OF A DAMAGE REMEDY AGAINST INDIVIDUALS WHO PARTICIPATE IN AN UNAUTHORIZED WORK STOPPAGE IS CONSISTENT WITH THIS COURT'S DECISIONS INTERPRETING §301	18

TABLE OF CONTENTS—(Cont'd)

Page

III. THE RECOVERY OF DAMAGES FROM INDIVIDUAL EMPLOYEES WHO PARTICIPATED IN AN UNAUTHORIZED WORK STOPPAGE IN VIOLATION OF THE NO-STRIKE CLAUSE IS NEEDED TO PRESERVE THE INTEGRITY OF THE COLLECTIVE BARGAINING AGREEMENT. 23

A. The Denial of a Damage Action Against the Individual Employees Leaves the Companies Without Any Monetary Remedy. 23

B. The Exemption of Employees From Personal Liability Would Serve No Legitimate Purpose Under Federal Labor Policy. 24

C. The Existence of a Damage Action Against Individuals in the Instant Case Will Not Mark a Return to the *Danbury Hatters* Era. 26

CONCLUSION 27

TABLE OF AUTHORITIES

Cases: **Page**

Atkinson v *Sinclair Refining Company*, 370 U.S. 238 (1962) 19, 22, 26

Boys Markets, Inc. v *Retail Clerks Union*, Local 770, 398 U.S. 235 (1970) 21, 23, 26

Carbon Fuel Company v *United Mineworkers of America*, —U.S.—, 100 S.Ct. 410 (1979) 23, 26

Charles Dowd Box Co., Inc. v *Courtney*, 368 U.S. 502 (1962) 19

Du Quoin Packing Company v *P-156 Amalgamated Meat Cutters and Butcher Workers of North America*, 321 F.Supp. 1230 (E.D. Ill. 1971) 25

Emporium Capwell Co. v *Western Addition Community Organization*, 420 U.S. 50 (1975) 24

Gateway Coal Co. v *United Mineworkers of America*, 414 U.S. 368 (1974) 21

General Drivers, Local 89 v *Riss & Co.*, 372 U.S. 517 (1963) 21

Hines v *Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976) 6, 18, 20, 21, 22

Lawlor v *Loewe*, 235 U.S. 522 (1915) 6, 7, 8, 9, 13, 14, 15, 26

Loewe v *Lawlor*, 208 U.S. 274 (1908) 6, 7, 8, 9, 13, 14, 15, 26

Loewe v *Savings Bank of Danbury*, 236 F. 444 (2d Cir. 1916), aff'd, 242 U.S. 357 (1917) 6, 7, 8, 9, 13, 14, 15, 26

National Labor Relations Board v *Draper Corp.*, 145 F.2d 199 (4th Cir. 1944) 24

New York State United Teachers v *Thompson*, 459 F.Supp. 677 (N.D. NY 1978) 21, 22

TABLE OF AUTHORITIES—(Cont'd)

Cases:

Page

Putnam Fabricating Co. v *Null*, —F.2d—, 105 LRRM 2645 (4th Cir. 1980) 9

Republic Steel Corp. v *Maddox*, 379 U.S. 650 (1965) 20

Sinclair Oil Corp. v *Oil, Chemical & Atomic Workers Int'l. Union*, 452 F.2d 49 (7th Cir. 1971) 6, 15, 16

Smith v *Evening News Association*, 371 U.S. 195 (1962) 6, 18, 20, 22

Textile Workers Union of America v *Lincoln Mills of Alabama*, 353 U.S. 448 (1957) 18, 19, 20, 21, 24

Westinghouse Electric Corp. v *Electrical Workers*, 470 F.Supp. 1298 (W.D. Pa. 1979) 9

Statutes:

Labor Management Relations Act of 1947 (61 Stat. 136), 29 U.S.C. §§ 141, *et. seq.*

Section 1(b), 29 U.S.C. §141(b) 10

Section 301(a), 29 U.S.C. §185(a) 2, 3, 7, 20

Section 301(b), 29 U.S.C. §185(b) 2, 3, 9, 14, 15, 17, 19, 25, 26

Section 301(e), 29 U.S.C. §185(e) 3, 9

Congressional Material:

H.R. 4908, 79th Cong., 2d Sess. (1946) 16

H.R. 3020, 80th Cong., 1st Sess. §302(a) and (b) (as reported) (1947) 10

H.R. Rep. No. 245, 80th Cong., 1st Sess. (1947) 10, 13, 25

S. 1126, 80th Cong., 1st Sess. §301(a) and (b) (as reported) (1947) 11

S. Rep. No. 105, 80th Cong., 1st Sess. (1947) 10, 11, 12, 13, 14, 21, 23, 25

TABLE OF AUTHORITIES—(Cont'd)

Congressional Material: Page

92 Cong. Rec. 5705 (1946) 13

92 Cong. Rec. 5706 (1947) 16, 17

93 Cong. Rec. 3839 (1947) 12, 13

93 Cong. Rec. 4141 (1947) 12

93 Cong. Rec. 4410 (1947) 12

93 Cong. Rec. 5014 (1947) 12, 13

93 Cong. Rec. 6283 (1947) 8, 13

Miscellaneous:

Cox, *Some Aspects of the Labor Management Relations Act*, 1947, 61 Harv. L.Rev. 274 (1948) 12

Kozub, *Wildcat Strikers: Individual Liability Under Section 301?*, 3 Indus. Rel. L.J. 671 (1979) 12, 22

Note, *Section 301 of the Labor Management Relations Act – Individual Liability of Employees for an Unauthorized Work Stoppage In Breach of the No-Strike Clause of a Collective Bargaining Agreement*, 18 Wayne L.Rev. 1657 (1972) 13, 17

6 Ga. L. Rev. 797 (1972) 17

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BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is reported at 614 F.2d 1110 and is reprinted at App. A, pp. 1a-13a, of the Appendix to the Petition herein. The opinions of the United States District Court for Eastern District of Michigan, Southern Division

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* Petitioners, who were Plaintiffs in the District Court and Appellants in the Court of Appeals, are Complete Auto Transit, Inc., Automobile Carriers, Inc., and F. J. Boutell Driveaway Co., Inc.

** Respondents are present and former employees of the Petitioners who were represented by Teamsters Local 332, affiliated with the International Brotherhood of Teamsters and who were employed by Petitioners at their Flint, Michigan facilities at the time of the work stoppages. The following individuals were designated as named Plaintiffs in the consolidated action: Danny Reis, Larry Keller, Virgil Williams, John Sealy and John Lamb (Complete Auto Transit); Delbert Addison, Michael Boudreau, Donald Sears, and Gerald Supal (Automobile Carriers, Inc.); Joseph A. Hardacre, Carl S. Letts, Herman C. McCullough, Dennis Stockinger and Edward G. Warner (F. J. Boutell Driveaway Co., Inc.).

granting the Motion to Dismiss and denying the Motion for Reconsideration are not reported and are reprinted respectively at App. B, pp. 15a-19a and App. C, pp. 19a-21a of the Appendix to the Petition herein.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1254 (1). The judgment of the Court of Appeals was entered on February 8, 1980. The Petition herein was filed on May 7, 1980 and granted on October 14, 1980.

STATUTE INVOLVED

This case involves §301 of the Labor Management Relations Act of 1947, 61 Stat. 156, 29 U.S.C. §185 which is set forth in its entirety at App. D, pp. 21a-23a of the Petition herein. The pertinent provisions are set forth below.

Venue, amount, and citizenship

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Responsibility for acts of agent; entity for purposes of suit; enforcement of money judgments

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents

in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

Determination of question of agency

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsibile for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

STATEMENT OF THE CASE

Federal Jurisdiction

Complete Auto Transit, Inc., Automobile Carriers, Inc., and F.J. Boutell Driveaway Co., Inc., Plaintiffs below, brought this action pursuant to §301(a) of the Labor Management Relations Act of 1947, 61 Stat. 156, 29 U.S.C. §185(a) against named and unnamed employees for injunctive and monetary relief as a result of the employees' participation, without the authorization of their local union, in a work stoppage in violation of the no-strike clause of the collective bargaining agreement to which all parties were bound. The cases were consolidated for the hearing on the request for injunctive relief.

Statement of Facts

The companies are engaged in the transportation by truck of newly manufactured motor vehicles. (App. A, 2a)[1] All were signatory to an identical collective bargaining agreement entitled the National Master Automobile Transporters Agreement and Central and Southern Conference

[1] References to the appendices to the Petition herein are designated as "App., a". References to the Joint Appendix are designated "J.A. ".

Areas Supplemental Agreements which covered their operations, including their Flint, Michigan facilities. (J.A. 14, ¶5; 16, ¶10; 23, ¶5; 24, ¶10; App. A, 2a)[2] The collective bargaining agreement contained a no-strike clause and a provision required the submission of all disputes to the grievance procedure for resolution. (J.A. 14-15, ¶6; 23, ¶6; App. A, 2a)

The defendants are drivers and other individuals who were employed at the companies' Flint, Michigan facilities in June of 1976 and who were members of Teamsters Local 332. (J.A. 14 ¶4; 22-23, ¶4) Teamsters Local 332 is the exclusive bargaining agent for the employees and is signatory to the collective bargaining agreement with the companies. (J.A. 14, ¶3; 22, ¶3; App. A, 2a)

On June 8, 1976, the employees of Complete Auto Transit engaged in an unauthorized work stoppage. (J.A. 8, ¶13; 8, ¶15; 18, ¶17; 24, ¶13; 25, ¶15; App. A, 2a; Tr. 120)[3] On June 10, 1976, the employees of the other two companies engaged in similar unauthorized strike activity. (App. A, 2a; Tr. 121)

The companies filed the instant actions, which were subsequently consolidated, pursuant to 29 U.S.C. §185(a) requesting injunctive relief and damages from the employees. The companies alleged that the work stoppages were in violation of the collective bargaining agreement and were not authorized by the local union. [4]

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[2] The collective bargaining agreement is found in the record as Exhibit A attached to the Complaint of Complete Auto Transit, Inc.

[3] References to the transcript of the June 14, 1976 hearing on the request for injunctive relief are designated "Tr. ". The transcript is found in the record.

[4] The allegations pertaining to the unauthorized nature of the work stoppage and to the request for damages read as follows:

> 15. The aforementioned work stoppage and tie-up of equipment has been participated in, encouraged and caused by Defendants herein without the aid and assistance or authorization of the Union; and the unlawful refusal of Defendants to perform work constitutes an unauthorized or wildcat strike.
>
> 16. The Defendants, by their participation in the unlawful work stoppage, are personally liable to Plaintiff for any and all damages arising out of the work stoppage, including, but not limited to, lost profits, overhead, and attorneys fees. (J.A. 8)

On June 14, 1976, the District Court, after a hearing, denied the companies' request for injunctive relief. The District Court found that the underlying dispute was between the union and its members and therefore was not arbitrable under the agreement. (App. A, 2a)

On June 16, 1976, the companies filed amended complaints renewing their request for injunctive relief and damages against the employees. (J.A. 13, *et seq.*) After a hearing on June 21, 1976, the District Court issued preliminary injunctions. The District Court found that the dispute between the union and its members had been resolved and that the only remaining issue pertained to the employees' demand for amnesty from the companies which was arbitrable under the collective bargaining agreement. The District Court concluded that the work stoppages violated the no-strike clause and that the requirements for injunctive relief were present. (App. A, 3a)

On July 12, 1976, the employees filed their answers to the original and amended complaints. The employees admitted that the local union did not aid, assist or authorize the work stoppages. (J.A. 25, ¶15; 29, ¶17)

The Proceedings Below

1. The District Court

In March of 1977, the employees moved for the dismissal of the consolidated actions. (J.A. 31)[5] The motion asserted that the companies were not entitled to damages when the dispute which caused the strike was not over an arbitrable issue. The District Court granted the motion and held that the employees could not be sued for monetary relief in their individual capacities since such relief would frustrate the Congressional purpose of shielding union members from individual liability. (App. B, 16a, 17a)

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[5] The motion also sought to have the injunctions dissolved. Since the only issue raised herein is the dismissal of the damage action, discussion of the lower courts' treatment of the injunction issue has been omitted.

The companies moved for the reconsideration of the dismissal of the action. (J.A. 35)[6] The District Court denied the motion. The District Court found the reasoning in *Sinclair Oil Corp.* v. *Oil, Chemical, & Atomic Workers Int'l. Union*, 425 F.2d 49 (7th Cir. 1971) to be in harmony with the intent of Congress in passing §301 and rejected the companies' contention that the Appeals Court in *Sinclair* had improperly construed the legislative history. (App. C, 20a)

2. The Appeals Court

The Court of Appeals for the Sixth Circuit affirmed the dismissal of the damage action. The Appeals Court discussed the Seventh Circuit's decision in *Sinclair Oil, supra*, and agreed with that court's interpretation of the legislative history of §301. (App. A, 10a, 13a) The Appeals Court stated that the Seventh Circuit had concluded that Congress did not intend to create a cause of action under §301 for damages against individual union members for breach of the no-strike agreement. The Seventh Circuit's conclusion was based on its interpretation of the legislative history of §301 and its perception of the Congressional intent to avoid a repetition of the *Danbury Hatters* cases. [7] The Appeals Court reviewed this Court's decisions in *Smith* v. *Evening News Association*, 371 U.S. 195 (1962) and *Hines* v. *Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976) and rejected the contention that either case supported the existence of a damage action against individual employees for their breach of the no-strike agreement. (App. A, 13a)

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[6] In their motion for reconsideration, the companies argued that the damage action did not violate Congressional policy because the employees acted as individuals in derogation of their union rather than as its agents. (J.A. 35, ¶1)

[7] See *Loewe* v. *Lawlor*, 208 U.S. 274 (1908); *Lawlor* v. *Loewe*, 235 U.S. 522 (1915) and *Loewe* v. *Savings Bank of Danbury*, 236 F.444 (2d Cir. 1916), aff'd, 242 U.S. 357 (1917).

SUMMARY OF ARGUMENT

The Labor Management Relations Act of 1947 was enacted in response to widespread labor unrest which caused concern in Congress over the continued viability of the collective bargaining process. Section 301 (a) represented the attempt to provide a forum in federal court wherein labor organizations could sue and be sued. The statutory recognition of the collective bargaining agreement as valid and binding contract was considered a necessary step in promoting industrial peace.

The Appeals Court's construction of the legislative history and its emphasis upon the effect of the *Danbury Hatters* cases are not applicable to the instant factual situation. Congress intended to protect individuals from monetary liability when they act as agents of their union or when the union acts without the members' knowledge or authority. There is nothing in the legislative history that would support the Appeals Court's determination that Congress intended to extend this same protection to employees who act in their individual capacity in violation of the collective bargaining agreement. The limitation of an individual's liability was carefully and specifically delineated by Congress.

The Appeals Court did not correctly interpret or apply the decisions of this Court which have involved the construction and the interpretation of §301. The Appeals Court failed to recognize that the issue presented lies in the penumbra of the express statutory mandate and failed to resolve the issue by reconciling the policy of the statute with the problem presented. This Court's decisions recognize that employees as well as unions may sue and be sued under §301. Such a result is consistent with the legislative purpose. The refusal to recognize that an employer may sue its employees for their individualized, unauthorized breaches of the collective bargaining agreement thwarts the Congressional purpose as interpreted by this Court.

No justification can be found in either the language of §301 or its legislative history for the result of the Appeals Court's decision which relegates the employer's rights to a lesser degree of protection. The Appeals Court's decision establishes a gap in the uniform enforcement of collective bargaining agreements. Individual employees are given access to the federal courts for the vindication and the preservation of contractural rights while an employer is denied similar access when seeking to redress the damages unlawfully inflicted upon it. As a result, the Congressional policy of furthering industrial peace through the development and maintenance of the collective bargaining process is frustrated and the status of the collective bargaining agreement as a valid, binding, and enforceable agreement is diminished. Employees who violate with impunity the terms of a collective bargaining agreement should bear the consequences of their actions.

ARGUMENT

I. THE APPEALS COURT'S DECISION INCORRECTLY AND ERRONEOUSLY INTERPRETED THE LEGISLATIVE HISTORY OF SECTION 301.

In affirming the District Court's dismissal of the damage action against the employees, the Appeals Court concluded that the legislative history of Section 301 indicates that Congress did not intend to create a cause of action for damages against individual union members. (App. A, 13a) The analysis and the conclusion of the Appeals Court of the legislative history fails to place the Congressional concern over individual liability into the proper prospective. Congress was indeed concerned about individual liability but that concern arose from a factual situation far different from that which confronted the Appeals Court in the instant case. The concern of Congress was to insulate individuals from monetary liability because of actions taken by labor organizations as demonstrated in the *Danbury Hatters* cases. See, e.g., 93 Cong. Rec. 6283 (1947) (Rep. Case)

The analysis of the Appeals Court of the legislative history of §301 was, at best, superficial. The decision of the Appeals Court typifies the inexplicable failure of the courts to distinguish between a *Danbury Hatters* factual situation and a factual situation where union members act as individuals and not as agents for their union. See, e.g., *Putnam Fabricating Co.* v. *Null*, — F.2d —, 105 LRRM 2645 (4th Cir. 1980); *Westinghouse Electric Corp.* v. *Electrical Workers*, 470 F. Supp. 1298 (W.D. Pa. 1979). The Congressional concern that is manifested in §301(b) and (e) did not extend to employees acting in their individual capacity and in derogation of their bargaining representative.

Examination of the legislative history is necessary since the express language of the statute does not specifically deal with the issue presented. The Appeals Court's analysis of the legislative history was defective from the outset since it failed to properly characterize the issue and to distinguish the instant factual situation from the factual situation in *Danbury Hatters* that confronted Congress. The Appeals Court incorrectly framed the issue as one involving individual liability for a violation of the contractural no-strike clause where there was *no attempt* to recover from the union. (App. A, 10a) The Appeals Court did not place sufficient emphasis on the undisputed fact that the work stoppages were not authorized by either the International or local union. No attempt was made to recover from the union because there was no legal basis for recovery given the absence of its authorization or ratification of the work stoppages.

A. The Congressional Purpose Behind the Enactment of §301 Was to Make Collective Bargaining Agreements Binding and Enforceable Upon the Parties.

In enacting the Taft-Hartley Act, Congress was concerned with several interrelated concerns. The statute was intended to reduce the large number of strikes that had occurred, strengthen the collective bargaining procedure, and equalize the balance of power between employers and

unions. 29 U.S.C. §141 (b), 61 Stat. 136; H.R. Rep. No. 245, 80th Cong., 1st Sess. 3-6 (1947); S. Rep. No. 105, 80th Cong. 1st Sess. 1-3 (1947). §301 was enacted to provide for enforcement of collective bargaining agreements and to eliminate the possibility of holding individuals liable where the union, as an entity, is responsible for the contractural breach.

In the analysis of the provisions which authorized suits in federal court contained in the report from the Committee on Education and Labor,[8] the concern of the committee that labor organizations be held responsible for contract violations was clearly expressed. The report stated:

> When labor organizations make contracts with employers, such organizations should be subject to the same judicial remedies and processes in respect of proceedings involving violations of such contracts as those applicable to all other citizens. Labor organizations cannot justifiably ask to be treated as responsible contracting parties unless they are willing to assume the responsibilities of such contracts to the same extent as the other party must assume his. H.R. Rep. No. 245 at 46.

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[8] The provisions of the H.R. 3020 concerning suits against labor organizations and the liability of labor organizations for the actions of its agent read as follows:

> Sec. 302.(a) Any action for or proceeding involving a violation of an agreement between an employer and a labor organization or other representative of employees may be brought by either party in any district court of the United States having jurisdiction of the parties, without regard to the amount in controversy, if such agreement affects commerce, or the court otherwise has had jurisdiction of the cause.
>
> (b) Any labor organization whose activities affect commerce shall be bound by the acts of its agents, and may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets. H.R. 3020, 80th Cong., 1st Sess. §302(a) & (b) (as reported)

The Senate was also concerned with the enforceability of collective bargaining agreements. S. Rep. No. 105 at 15. The report from the Committee on Labor and Public Welfare stated that the Senate proposal[9] would make agreements equally enforceable on both parties. The report stated:

> If unions can break agreements with relative impunity, then such agreements do not tend to stabilize industrial relations. The execution of an agreement does not by itself promote industrial peace. The chief advantage which an employer can reasonably expect from a collective labor agreement is assurance of uninterrupted operation during the term of the agreement. Without some effective method of assuring freedom from economic warfare for the term of the agreement, there is little reason why an employer would desire to sign such a contract.
>
> Consequently, to encourage the making of agreements and to promote industrial peace through faithful performance by the parties, collective agreements affecting interstate commerce should be enforceable in the Federal courts. Our amendment would provide for suits by unions as legal entities and against

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[9] The provisions of S. 1126 pertaining to suits against labor organizations and the liability of labor organizations read as follows:

> Sec. 301(a) Suits for violation of contracts concluded as the result of collective bargaining between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.
>
> (b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act may sue or be sued in its common name in the courts of the United States: *Provided*, That any money judgment against such labor organization shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets. S. 1126, 80th Cong., 1st Sess. §301(a) and (b) (as reported)

> unions as legal entities in the Federal courts in disputes affecting commerce. S. Rep. No. 105 at 16.

The Senate report also reflected the concern that until labor organizations were recognized as legal entities by all jurisdiction entities, the mutual responsibility needed to make collective bargaining agreements viable would be missing. The necessity for enforceability was stated as follows:

> Statutory recognition of the collective bargaining agreement as a valid, binding, and enforceable contract is a logical and necessary step. It will promote a higher degree of responsibility upon the parties to such agreements, and will thereby promote industrial peace. S. Rep. No. 105 at 17.

The debate in the Senate concerning §301(a) revealed that one of the major purposes of the section was to overcome the procedural difficulties that existed in some states when an employer attempted to sue a union. 93 Cong. Rec. 3839 (1947) (Senator Taft); 93 Cong. Rec. 5014 (1947) (Senator Ball).[10] The debate also revealed the overriding concern that existed in Congress that collective bargaining agreements must be enforceable and binding upon the parties. 93 Cong. Rec. 3839 (1947) (Senator Taft); 93 Cong. Rec. 4410 (1947) (Senator Taft). Senator Taft stated:

> What is the purpose of Title III? The purpose of Title III is to give the employer and the employee the right to go to the Federal courts to bring a suit to enforce the terms of a collective-bargaining agreement—exactly the same subject matter which is contained in Titles I and II. 93 Cong. Rec. 4141 (1947).

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[10] By treating labor organizations as legal entities, Congress overcame the common law rule which precluded labor organizations from being sued because of their status as unincorporated associations. See, Cox, *Some Aspects of the Labor Management Relations Act*, 1947, 61 Harv. L. Rev. 274, 303-04 (1948); Kozub, *Wildcat Strikers: Individual Liability Under Section 301?*, 3 Indus. Rel. L. J. 671, 673 (1979)

The Senate and House reports as well as the statements of Senator Taft establish that the underlying purpose of §301(a) was to provide a mechanism to insure that a collective bargaining agreement would remain a viable institution in the framework of national labor policy by allowing the parties access to federal court to enforce it. The promotion of "a higher degree of responsibility" upon the parties was viewed as being crucial to the promotion of industrial peace. S. Rep. No. 105 at 17.

B. The Appeals Court Misconstrued the Significance of the Congressional Concern Over Individual Liability.

In rejecting the argument that a damage action could be brought against the individual employees, the Appeals Court stated that the specter of the *Danbury Hatters* cases "haunted the minds of the lawmakers." (App. A, 11a) Although the Appeals Court made reference to several statements made during the Senate debate,[11] it failed to properly apply that concern to the factual situation confronting it.

There can be no doubt that Congress was concerned with the consequences of individual liability arising from breaches of the collective bargaining agreement. The legislative history reveals the intent of Congress to prohibit individual liability where the union had induced, authorized, or ratified the actions of its agents or where the union had acted without the knowledge of its members. Congress condemned individual liability when the members were held responsible for the actions of their leaders. H.R. Rep. No. 245 at 46; S. Rep. No. 105 at 16; 93 Cong. Rec. 3839 (1947) (Senator Taft); 93 Cong. Rec. 5014 (1947) (Senator Ball); 93 Cong. 6283 (1947) (Rep. Case); see, Note, *Section 301 of the Labor Management Relations Act–Individual Liability of Employees for An Unauthorized Work Stoppage In Breach of the No-Strike Clause of a Collective Bargaining Agreement*, 18 Wayne L. Rev. 1657, 1664-1666 (1972).

[11] 92 Cong. Rec. 5705 (Senator Taft); 93 Cong. Rec. 5014 (Senator Ball)

In the *Danbury Hatters* cases, individual union members were held liable for the damages caused by a nationwide boycott of a hat manufacturer directed by their union. In enacting §301(b), Congress prevented the repetition of the *Danbury Hatters* situation by providing for union liability for union wrongs. The clear intent was to prevent individual member liability for the union's action.

The instant case does not fall within the Congressional intent as manifested in §301(b). The employees herein were not sued because of their actions as agents of their union or because of the actions of their union. The work stoppages in which the employees participated were not authorized or ratified by their union. The employees were sued for their individual breaches of the collective bargaining agreement.

Apart from the legislative history concerning the *Danbury Hatters* cases, the Appeals Court does not support its finding with references to the legislative history in support of its conclusion. Indeed, no support could be cited because none exists. Congress intended to protect individuals from monetary liability when they are acting as agents of their union or when their union acted without the members' knowledge or authority. Neither situation is present in this case. There is nothing in the legislative history that supports the "conclusion" of the Appeals Court that Congress intended to extend this same protection to individuals who act in their own individual capacity and not as agents of their union. The Appeals Courts' finding can not be reconciled with the legislative purpose of promoting a higher degree of responsibility on parties to collective bargaining agreements. S. Rep. No. 105 at 17.

C. The Appeals Court's Conclusion That the Only Remedy Available to an Employer Confronted With an Unauthorized Work Stoppage in Violation of the No-Strike Clause is Discipline Has No Basis in the Legislative History of §301.

Although recognizing that one of the purposes behind the enactment of the Taft-Hartley Act was the promotion of

labor peace by making unions responsible for their actions, the Appeals Court concluded that there appeared to be no corresponding purpose to make individuals liable for breaches of the no-strike clause which was not authorized by the union. (App. A, 10a) The Appeals Court engaged in a limited review of its own of the legislative history of §301 and relied almost exclusively upon the Seventh Circuit's interpretation of the legislative history set forth in *Sinclair Oil Corp.* v. *Oil, Chemical & Atomic Workers*, 452 F.2d 49 (7th Cir. 1971). The Appeals Court's decision reflects its concern over the *Danbury Hatters* cases and the subsequent Congressional disapproval of the result. The preoccupation of the Appeals Court with *Danbury Hatters* is predictable because of the way the Appeals Court framed the issue before it. The issue was framed in terms that did not foreclose a finding of agency between the employees and their union. The Appeals Court did not emphasize or even acknowledge that the factual situation presented in this case was far different from that in *Danbury Hatters* or before the Seventh Circuit in *Sinclair*. (App. A, 9a-10a) By adopting the Seventh Circuit's conclusion, the Appeals Court avoided reconciling the legislative purpose of §301 with the factual situation confronting it.

Because the Appeals Court adopted the reasoning and the conclusion of the Seventh Circuit in *Sinclair*, the Seventh Circuit's decision must be reviewed. The Seventh Circuit recognized that the language of §301 did not expressly prohibit or authorize damage suits against union members who engage in wildcat strikes. 452 F.2d at 52. Under the Seventh Circuit's interpretation of the legislative history, the principal concern of Congress was with making unions, as parties to collective bargaining agreements, responsible for breaches and to avoid a repetition of subjecting individual members to "financial ruin." 452 F.2d at 52.

The Seventh Circuit's analysis of the Congressional concerns which lead to the enactment of §301(b) is simply not dispositive of the issue of whether individual members

were intended to be shielded from liability for their own, unauthorized breaches of the collective bargaining agreement under §301(a). Rather than acknowledging that the debate under §301 focused on the issue of union liability and that the issue of individual liability was not addressed specifically by Congress, the court concluded that Congress had no intention of subjecting union members engaged in wildcat strikes to individual liability for damages. 452 F.2d at 54. The Seventh Circuit's recitation of the legislative history does not support its conclusion.

The only specific references made by the Seventh Circuit in *Sinclair* in support of its conclusion of the exclusivity of discipline are to the Senate debate over the Case bill[12] which was a forerunner of the Taft-Hartley Act. 452 F.2d at 53. The Seventh Circuit emphasized that Senator Taft stated that wildcat strikers ought to be disciplined if they prevented a "responsible labor leader" from fulfilling his agreement and that the proposed amendment would enable leaders to "avoid wildcat strikers." 452 F.2d at 53.

The Seventh Circuit's interpretation of Senator Taft's statement is at best questionable. The statement of Senator Taft followed a statement of Senator Capehart which used the example of fines against miners by their union for refusal to work in accordance with the contract. Taft's response indicates that he agreed that a union should be able to fine members who interfere with a labor leader's administration of a contract.[13] The Seventh Circuit's use of

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[12] H.R. 4908, 79th Cong., 2d Sess. (1946)(vetoed in 1946)

[13] The full exchange between Senators Capehart and Taft reads as follows:

> Mr. Capehart. I believe I am correct in the statement that in many miners' contracts an agreement is contained that if any member of the union pulls a wild-cat strike or a sitdown strike, or refuses to work, he is automatically fined by the union, and I think the fine has been as high as $6 a day. I think it will be found today that such provisions are contained in miners' contracts, by which they try to discipline their own members by fining them $2, or $4, or $6

(Continued on Page 17)

this exchange concerning finds by unions against their members as definitive support that discipline is the sole remedy available to the employer is unfounded and unwarranted. See, 18 Wayne L. Rev. at 1664-65, 6 Ga. L. Rev. 797, 801 (1972).

Given the clear legislative concern that existed for parties to be bound by the terms of a collective bargaining agreement, an argument can be made that if Congress meant to restrict an employer's remedy, it would have enacted specific legislation or broadened §301(b). An equally reasonable implication that can be drawn from the legislative history is that Congress intended not to restrict an employer's remedies against employees who engaged in unauthorized work stoppages in violation of the collective bargaining agreement. 18 Wayne L. Rev. at 1665-66.

The conclusion of the Seventh Circuit and the Appeals Court that Congress had no intention of authorizing individual damage actions in the instant factual situation is based on a faulty premise. The conclusion is not supported by the legislative history because Congress actually had no opinion on the issue. The debate focused on union liability and the reasons why such liability or at least the availability of a suit was necessary. Neither the express language of §301 nor its legislative history precludes a damage action against individuals in the present case.

The Congressional concerns that are manifested by the legislative history of §301 are two-fold. Congress sought to

(Footnote [13] Continued from Page 16)
a day if they refuse to work according to the terms of the collective bargaining contract.

Mr. Taft. Yes, I think so. Generally, this particular provision has been approved by the labor people. They feel, and I feel, that a responsible labor leader who wants to keep his contract should not be hampered by the fact that members of the union whom he cannot control put on a wildcat strike. Four or five men can tie up an entire plant — and it has happened repeatedly — if they happen to be in a crucial spot. Those are the men who ought to be disciplined if they prevent a responsible labor leader from carrying out his collective-bargaining contract. 92 Cong. Rec. 5706 (1946).

make all parties—unions and employees—responsible in their actions and accountable for their actions. Congress also intended for individual union members to be insulated from liability for union wrongs. The Appeals Court erred in failing to consider these Congressional objectives in making its determination that no damage action could be maintained. An action against the employees in this case, based on the undisputed nature of the unauthorized contract violation, would do no harm to the Congressional objectives. Indeed, such an action serves to assure future uninterrupted operation for the companies while securing the higher degree of responsibility upon parties, in this case, employees, to a collective bargaining agreement.

II. THE AVAILABILITY OF A DAMAGE REMEDY AGAINST INDIVIDUALS WHO PARTICIPATE IN AN UNAUTHORIZED WORK STOPPAGE IS CONSISTENT WITH THIS COURT'S DECISIONS INTERPRETING §301.

The Appeals Court reviewed this Court's decisions in *Smith* v. *Evening News Ass'n.*, 371 U.S. 195 (1962) and *Hines* v. *Anchor Motor Freight*, 424 U.S. 554 (1976) and concluded that neither case is authority for holding that Congress intended to create a cause of action for damages against individual employees. (App. A, 12a-13a). In so holding, the Appeals Court has misinterpreted the significance of those decisions as well as the meaning and intent of *Textile Workers Union of America* v. *Lincoln Mills of Alabama*, 353 U.S. 448 (1957).

In *Lincoln Mills*, this Court interpreted Section 301(a) to authorize federal courts to fashion a body of law for the enforcement of collective bargaining agreements. 353 U.S. at 451. The concern of Congress was to establish a procedure for making such agreements enforceable in federal court. This Court stated that the substantive law to be applied is federal law which the courts must fashion from the policy of our national labor laws. 353 U.S. at 456. A

narrow reading of §301 as being only jurisdictional would defeat the policy underlying §301. This Court recognized that although some substantive law was furnished in the Labor Management Relations Act,

> Other problems will lie in the penumbra of express statutory mandates. Some will lack express statutory sanction but will be solved by looking at the policy of the legislation and fashioning a remedy that will effectuate that policy. The range of judicial inventiveness will be determined by the nature of the problem. 353 U.S. at 457.

On several occasions this Court has reviewed the policy underlying §301 in the context of the lower courts' exercise of judicial inventiveness. In *Charles Dowd Box Co.* v. *Courtney*, 368 U.S. 502 (1962), this Court was presented with the issue of whether §301 operated to divest a state court of jurisdiction over a suit for a violation of a collective bargaining agreement. In holding that federal jurisdiction was not exclusive, this Court examined the legislative history of §301 and found that the basic purpose was to expand the availability of forums for the enforcement of collective bargaining agreements. 368 U.S. at 508. This Court also recognized that the Congressional purpose of promoting industrial peace through the encouragement of the collective bargaining process would be frustrated unless the parties to collective bargaining agreements "could have reasonable assurance that the contract they negotiated would be honored." 368 U.S. at 509.

In *Atkinson* v. *Sinclair Refining Co.*, 370 U.S. 238 (1962), this Court reviewed the legislative purpose underlying §301(b) in the context of a damage action against a union and its officers and members. The issue of individual liability was not reached because the individuals were alleged to be acting as agents for the union. 370 U.S. at 247, 249 n. 7. §301(b) was intended by Congress to insure that the union as an entity and not the individual members would be held responsible for union wrongs.

In *Smith* v. *Evening News Ass'n.*, 371 U.S. 195 (1962), the employer argued that an action by an employee to collect wages in the form of damages was not among the suits envisioned by Congress to fall within §301. In rejecting this argument, this Court gave explicit recognition to the fact that individual claims often lie at the "heart" of the contractural grievance procedure and are "intertwined" with the interests of the union. 371 U.S. at 200. This Court rejected the argument that §301 excluded all suits brought by employees rather than unions. The word "between" in §301(a) refers to "contracts" and not to "suits." 371 U.S. at 200; see also, *Republic Steel Corporation* v. *Maddox*, 379 U.S. 650, 657, n. 7.

In *Hines* v. *Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976), this Court again addressed the purpose and the scope of §301. This Court stated:

> Section 301 contemplates suits by and against individual employees as well as between unions and employers; and contrary to earlier indications §301 suits encompass those seeking to vindicate "uniquely personal" rights of employees such as wages, hours, overtime pay, and wrongful discharge. (*Smith* citation omitted) Petitioners' present suit against the employer was for wrongful discharge and is the kind of case Congress provided for in §301. 424 U.S. at 562.

The present action is one which the employers submit is warranted as a remedy under *Lincoln Mills* because it will effectuate the policy behind the enactment of §301. The availability of a damage action will further the Congressional policy of insuring that parties to a collective bargaining agreement abide by the terms of the agreement by placing sanctions behind such agreements.

The companies sought "judicial inventiveness" from the District Court and the Appeals Court but were unsuccessful. The attempt was based upon this Court's recognition

that parties to a collective bargaining agreement—unions, employees, and companies—can enforce their respective rights under the agreement in federal court under §301. See, e.g., *Boys Markets, Inc.* v. *Retail Clerk's Union, Local 770,* 398 U.S. 235 (1970) (employer); *Hines* v. *Anchor Motor Freight, Inc.,* 424 U.S. 554 (1976) (employees); *General Drivers, Local 89* v. *Riss & Co.,* 372 U.S. 517 (1963) (union and employees); *Gateway Coal Co.* v. *United Mineworkers of America,* 414 U.S. 368 (1974) (employer); *Textile Workers of America* v. *Lincoln Mills of Alabama,* 353 U.S. 448 (1957) (union).

The companies sought to remedy the breach of their contractual rights by bringing a damage action against the employees who participated in the authorized work stoppage in violation of the contractual no-strike clause. Such an action is a logical extension of the policy that parties to collective bargaining agreements should abide by the terms of the agreement and serves to promote industrial peace through "faithful performance by the parties." See, S. Rep. No. 105 at 16. The availability of such an action would recognize that just as labor organization may be held liable for its breach of a no-strike clause, employees who engage in unauthorized, wildcat strikes would similarly be held accountable for their actions. If individual employees choose to disregard the agreement, they would do so at their own financial peril. Collective bargaining agreements should be equally binding and enforceable on all parties to the agreement.

The district court in *New York State United Teachers* v. *Thompson,* 459 F.Supp. 677 (N.D. N.Y. 1978) exercised the "judicial inventiveness" expected in *Lincoln Mills.* The Appeals Court dismissed the companies' reliance on the case because of what it viewed as several distinguishing facts. (App. A, 11a-12a) The two employees who were sued had failed to remain in their positions for the specified time receiving extended educational leave. 459 F.Supp. at 679. Since the two employees were no longer employed, the

district court noted that the "usual" remedy of discipline was not available. The district court reviewed this Court's decisions interpreting §301 and the express language of §301(b) and concluded that the issue of individual liability fell within the penumbral area of the express statutory mandates. 459 F.2d at 681-82. The district court also concluded that there was nothing "sacrosanct" in the language of §301(b) or this Court's decision in *Atkinson* v. *Sinclair Refining Co.*, 370 U.S. 238 (1962) that would insulate individual employees for monetary liability under §301. 459 F.Supp. at 683. The district court noted that to allow the individual conduct to fall outside the scope of §301 would leave a gap in the uniform enforcement of the statute and concluded that the rights of an employer were not to be accorded a lesser degree of protection. 459 F.Supp. at 683-84.

Notwithstanding the Appeal Court's attempts to distinguish the district court's decision in *Thompson*, the reasoning that a collective bargaining agreement is binding on employees and that the federal courts are free to fashion appropriate remedies for breaches of the collective bargaining agreement is equally applicable in the present case. See, 3 Indus. Rel. L. Rev. at 677-78. The reasoning of the district court in *Thompson* and its exercise of "judicial inventiveness" is certainly more consistent with this Court's decisions interpreting §301 than the decision of the Appeals Court.

The Appeals Court's interpretation of this Court's decisions in *Smith* and *Hines* misconstrues the significance of those decisions as they pertain to the development of federal substantive labor law. Those decisions recognize that employees as well as the unions may sue and be sued under §301. The Appeals Court's refusal to recognize that an employer may sue its employees for individualized breaches of the collective bargaining agreement thwarts the Congressional purpose.

III. THE RECOVERY OF DAMAGES FROM INDIVIDUAL EMPLOYEES WHO PARTICIPATED IN AN UNAUTHORIZED WORK STOPPAGE IN VIOLATION OF THE NO-STRIKE CLAUSE IS NEEDED TO PRESERVE THE INTEGRITY OF THE COLLECTIVE BARGAINING AGREEMENT.

A. The Denial of a Damage Action Against the Individual Employees Leaves the Companies Without Any Monetary Remedy.

The Senate Report recognized that the chief advantage which an employer can expect from a collective bargaining agreement is the assurance of uninterrupted operation during the life of the agreement. S. Rep. No. 105 at 16; cf. *Boys Markets*, 398 U.S. at 249. The companies were signatory to a collective bargaining agreement and shared the reasonable expectation that they would enjoy uninterrupted operation not only during the life of the agreement but also during the negotiations on the amendments to the agreement. The companies' expectations were shattered by the employees' actions. There is no dispute that each company was the victim of a work stoppage. There is also no dispute that the work stoppages were unauthorized by the employees' collective bargaining representative and were in violation of the no-strike clause of the agreement.

The companies did not seek damages from the union since no basis of recovery existed given the unauthorized nature of the employees' actions. In *Carbon Fuel Co.* v. *United Mineworkers of America*, — U.S. —, 100 S. Ct. 410 (1979), this Court held that the responsibility of a union under §301 for strikes in breach of the collective bargaining agreement is limited to those situations where the union may be found responsible under the common law rules of agency. 100 S. Ct. at 413. Accordingly, a union is not liable for strikes which it did not participate in, authorize, or ratify.

The *Carbon Fuel* decision coupled with the Appeals Court's denial of relief against the individual employees

effectively precludes the companies from any remedy to recoup the financial losses that the employees caused by their actions. Such a result is clearly unwarranted under §301 since there is nothing in the language of §301 or its legislative history that indicates Congress intended to limit the type of relief available to the injured party to the collective bargaining agreement where the employees are not acting as agents of their union. The Appeals Court's decision errodes the Congressional intent as recognized by this Court in *Lincoln Mills* that parties, including employees, to such agreements should be bound by them. 353 U.S. at 453.

The companies are left in a position where they were victimized by a dispute over which they had no control; were unable to engage in normal operations because of their employees' actions; were coerced, albeit unsuccessfully, by the employees to give up additional rights under the agreement; and were left by the courts without any monetary remedy. This result is hardly what Congress had anticipated when it enacted §301.

B. The Exemption of Employees From Personal Liability Would Serve No Legitimate Purpose Under Federal Labor Policy.

The possibility that the employees may be subject to financial liability as the result of their participation in an unauthorized work stoppage in violation of the collective bargaining agreement does not constitute an acceptable reason to exempt them from the ordinary consequences of their actions. The actions of employees who violate the agreement in contravention of their union seriously undermine the viability and stability of the collective bargaining agreement.[14] It was the disruption to the collective bar-

[14] The courts have long recognized that there can be no effective bargaining or stable contractual relationships if employees are at liberty to ignore the bargaining agency and take matters into their own hands. See *National Labor Relations Board* v. *Draper Corp.*, 145 F.2d 199 (4th Cir. 1944); *Emporium Capwell Co.* v. *Western Addition Community Organization*, 420 U.S. 50 (1975).

gaining process that troubled Congress and that Congress sought to prevent. H.R. Rep. No. 245, 80th Cong., 1st Sess. 46 (1974); S. Rep. No. 105, 80th Cong. 1st Sess. 16, 17 (1947).

The no-strike obligation in the agreement is meaningless unless the employees abide by it. Although a union may authorize or ratify a work stoppage, the employees actually implement the union directive. When employees act at the request of their union, they act as agents and under §301(b) are not subject to liability. When employees act without the authorization of their union, they have undercut the stability of the collective bargaining relationship and have reduced the no-strike commitment to a hollow promise.

The district court in *DuQuoin Packing Co.* v. *P-156 Amalgamated Meat Cutters and Butcher Workers of North America*, 321 F.Supp. 1230 (E.D. Ill. 1971), denied a motion to dismiss a damage claim against individual union members. The district court succinctly stated the policy underlying the need for such actions.

> History has shown that individual union members take advantage of the provisions of a collective bargaining agreement when it is to their individual advantage. By the same token they should individually be bound by the provisions of the collective bargaining agreement which they have ratified and be liable for any breach of the provisions of a collective bargaining agreement which they individually have caused. The individual members of a union should not be permitted to strike with impunity in violation of the collective bargaining agreement when they are not requested or demanded or authorized to so strike by their union officials. 321 F.Supp. at 1233.

The effect of the damage action sought by the companies would be to insure that employees would recognize their responsibilities under the collective bargaining agreements and to deter them from unauthorized activities of the

type presented in the instant case. To that end, the damage action would promote industrial peace by promoting a higher degree of responsibility upon the employees.

C. The Existence of a Damage Action Against Individuals in the Instant Case Will Not Mark a Return to the *Danbury Hatters* Era.

The existence of damage action against employees who, in their individual capacity, breached the no-strike clause of the collective bargaining agreement will neither constitute a return to the *Danbury Hatters* era nor negate the Congressional purpose expressed in 301(b). On the contrary, the availability of damages in this precise and narrow context will actually further the Congressional purpose underlying §301 by closing a gap which exists in the uniform enforcement of collective bargaining agreements. The actions of the employees in this case cannot be equated to the actions of the employees who were found liable in the *Danbury Hatters* cases.

In *Boys Markets, Inc.* v. *Retail Clerk's Union, Local 770*, 398 U.S. 235, 251 (1971), this Court recognized a shift in emphasis form the protection of the "nascent" labor movement to the encouragement of collective bargaining. The instant case exemplifies the devastating impact that an unauthorized work stoppage in violation of the contractural relationship has upon the collective bargaining agreement and the expectations of the parties.

The concern of Congress in enacting §301(b) was to insure that individual union members would not be held liable for the actions of their union. This Court in *Atkinson* v. *Sinclair Refining Co.*, 370 U.S. 238, 247-49 (1962) and in *Carbon Fuel Co.* v. *United Mine Workers of America*,— U.S.—, 100 S. Ct. 410, 413-14 (1979) has recognized that although union members are not liable in their individual capacity for the wrongs of their union, their union is likewise not liable for the employees' actions unless an agency relationship is established. This case does not fall within the holding of either of the two cases. The existence

of a damage action in this case against employees acting in admitted contravention of their union and in violation of their collective bargaining agreement would fill the void between *Atkinson* and *Carbon Fuel.*

Employees who benefit from the terms of a collective bargaining agreement and who can enforce that agreement in federal court should be held accountable in damages for their individual breaches of the agreement. This remedy will insure the continued integrity of the collective bargaining process by serving as a strong deterrent to recalcitrant parties who refuse to fulfill their obligations under the collective bargaining agreement.

CONCLUSION

For the reasons stated, it is respectfully urged that the judgment of the Court of Appeals for the Sixth Circuit should be reversed with instructions to reinstate the damage claim.

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